

APPEAL NO. 022570
FILED NOVEMBER 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 17, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter (June 6 through September 4, 2002). The appellant (carrier) appeals, arguing that there is no evidence to support the hearing officer's findings of fact and conclusions of law or alternatively that the findings and conclusions are against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fifth quarter. The claimant claimed she had no ability to work during the qualifying period and it is undisputed that she did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We have emphasized that a finding of no ability to work is a factual determination of the hearing officer which is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no ground to reverse the decision of the hearing officer. The hearing officer's findings that there were sufficient narrative reports complying with the requirements of Rule 130.102(d)(4); that

there were no other records in evidence showing that the claimant had some ability to work during the qualifying period in question; that the claimant's inability to work was a direct result of her impairment from her compensable injury; and that the claimant attempted in good faith, as defined in Rule 130.102(d)(4) to obtain employment commensurate with her ability to work are sufficiently supported by the record.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**THE CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge